

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 164 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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VAGHARI GALABBHAI AMTHABHAI

Versus

SATWARA LAXMANBHAI VITHALBHAI

Appearance:

MR SN SHELAT for Petitioner
MR CM BHUTADIA for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 29/09/2000

ORAL JUDGEMENT

1. This Appeal is filed by the appellant against the judgment and order of learned Assistant Judge, Mehsana, in Regular Civil Appeal No. 160 of 1980, whereby the learned Assistant Judge, Mehsana, dismissed the Appeal of

the present appellant, filed against the judgment and decree passed in favour of the plaintiff by learned Civil Judge (JD), Kheralu, in Regular Civil Suit No. 110 of 1976.

2. Brief facts of the case go to show that the present respondent purchased a house, as described in the plaint, situated in Vaghari Vas of Kheralu town, vide a registered document, executed on 9th June, 1976, for the consideration of Rs.1,500/- . Present respondent, Sathwara Laxmanbhai Vithalbhai, paid the consideration, but according to him, though there were averments in the document of purchase, which is produced at Exh.19 that the possession of the suit house was handed over to the plaintiff, but in fact, the possession was only handed over to plaintiff - respondent Sathwara Laxmanbhai Vithalbhai constructively and not actually. Therefore, Sathwara Laxmanbhai Vithalbhai filed the above mentioned Suit No. 110 of 1976, in the Court of Civil Judge (JD), Kheralu, for recovery of possession of the suit house, on the strength of registered document at Exh.19, against the present appellant - original defendant, from whom the plaintiff had purchased the above said suit house, vide document executed on 9th June, 1976, produced at Exh.19. The suit was contested by the present appellant by filing the written statement. It was contended that the said document, Exh.19 was not of outright sale. It was contended by the defendant that there were money dealings between the plaintiff and defendant, and defendant owed some money to the plaintiff, and for the security, the house was mortgaged to the plaintiff, and by misrepresentation, a sale deed got executed by the plaintiff. It was further contended that the market value of the suit house at the relevant time was Rs. 5,000 and, therefore, the document was executed by the defendant with the understanding that the same was

document of collateral security for the money dealing between the plaintiff and the defendant. The defendant also contended that the consideration was not passed which alleged to have passed as mentioned in the document. After framing of the issues and recording of the evidence and hearing both the sides, the trial judge came to the conclusion that the defendant has failed to prove his contention that there was a money dealing between the parties, and that the house was worth Rs. 5,000, and that the house was newly constructed, and that the document was got executed by misrepresentation of fact. The learned Civil Judge (JD), Kheralu, decreed the suit for the recovery of the possession in favour of the

plaintiff.

3. Being aggrieved, a Regular Civil Appeal was preferred by the defendant in the Court of learned District Judge at Mehsana, being Regular Civil Appeal No. 160 of 1980. After hearing both the parties, learned Assistant Judge, Mehsana, dismissed the Appeal, vide his judgment and order dated 11th December, 1981, and being aggrieved by the above said judgment and order of Assistant Judge, this Second Appeal is filed.

4. Learned Advocate Mr. S.C.Shah for the appellant original defendant was heard at length. However, learned Advocate Mr.C.M. Bhutadia for the respondent - original plaintiff, though served, is not present.

5. While admitting this Appeal, this Court framed the following substantial questions of law :

(A) Whether in the facts and under the circumstances of the case the lower courts were justified in holding that the document dated 9th June, 1976 was in the nature of mortgage by conditional sale having regard to the fact that the consideration alleged to have been paid is not the market value of the property, and having regard to the fact that the plaintiff never requested for possession of the premises on the execution of the sale deed, and having regard to the fact that the stamp paper was purchased by the defendant, and having regard to the fact that there were money dealings between the parties previously?

(B) Whether in the facts and under the circumstances of the case, the lower courts were justified in holding that the document was an outright sale in the absence of any consideration having been paid to the plaintiff?

6. It is found that both the courts below have come to the following conclusions regarding finding of fact after appreciating the evidence on record :

(i) the consideration of Rs.1500/- was passed and the receipt of which, is acknowledged by the defendant in the document itself;

(ii) the house was old one, and the description of the house being old one is in the document itself, and the defendant could not prove that he erected a new construction as alleged by him, and

(iii) the defendant failed to prove that the consideration of Rs.1500 was not the market value of the house, and the market value was Rs. 5,000 of the house.

7. Both the courts below have come to the conclusion that constructive possession was handed over to the plaintiff and the actual possession remained with the defendant by way of grace, and this case on fact, of the plaintiff was believed.

8. Now with the above conclusion of finding of fact when substantial questions of law as framed above were examined with reference to the recitals in the document Exh.19, it is found that the recitals in the document are clear to the extent that the intention of the parties must be to effect an absolute sale in absence of any proof regarding money dealing between the parties in absence of the proof of misrepresentation of fact by the defendant. The recitals in the document clearly shows that the consideration of Rs.1500 was acknowledged by the seller and that the house was in dilapidated condition and old one. There are also averments in the document clearly denoting an absolute sale. Once the execution of

registered document is proved then, the heavy burden rests on the defendant to discharge that the intention of the parties was not to execute the document, which was executed, and that the same was executed by misrepresentation of fact. On both these counts, the defendant failed in both the courts below. On examining the document at Exh.19, it is clear that the same was the document for an absolute sale.

9. In this view of the matter, none of the courts below erred regarding the interpretation of the document Exh.19. Consequently both the courts below have rightly passed decree of possession in favour of the plaintiff, present respondent.

10. In the result, there is no substance in the Appeal, the same stands dismissed with no order as to costs.

(J.R. Vora, J.)

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